

ESTATE OF GEORGE SWIFT BIRD : Order Docketing and
Deceased Oglala Sioux 144 : Dismissing Appeal
:
: Docket No. IBIA 81-30
:
: May 14, 1981

ORDER

In a notice of appeal received by the Office of Hearings and Appeals on March 25, 1981, Peter Swift Bird, Sr., an Oglala Sioux Indian of the Pine Ridge Reservation of South Dakota, seeks review of an Order Denying Petition for Rehearing entered by Administrative Law Judge Keith L. Burrowes on January 21, 1981. Appellant is one of three sons of the decedent. Although he was declared entitled to a portion of his father's estate under the laws of intestate succession, appellant claims his father died possessed of a valid will, a contention rejected by the Administrative Law Judge. Objection is also made to a creditor's claim granted against the estate.

The appeal is hereby docketed under the above case name and docket number. However, as explained below, the appeal must be dismissed by the Board because it was not timely filed.

Accompanying the judge's order of January 21, 1981, denying appellant's petition for rehearing, was a notice advising all interested parties that pursuant to the provisions of 43 CFR 4.250 and 4.291(a) and (b) (1980), an appeal from the order could be made to the Board of Indian Appeals if filed within 60 days from the date of the notice. This period ended on March 22, 1981. Because the foregoing date falls on a Sunday, actual filing was due Monday, March 23, 1981, pursuant to departmental rules governing the computation of time for the filing of documents. 43 CFR 4.22(e). As previously noted, appellant's notice of appeal was received March 25, 1981, or 2 days late according to regulations applicable in this case. ^{1/}

The Department has consistently adhered to the rule that the timely filing of an appeal is jurisdictional. Appeal of Harry Claterbos, 10 IBCA 216, 84 I.D. 969 (1977); LaVonne E. Grewell, 23

^{1/} New procedural regulations governing proceedings before the Board of Indian Appeals were published January 23, 1981. See 46 F.R. 7334. Such rules are to apply to final orders entered by Administrative Law Judges (Indian Probate) on or after January 23, 1981. Among other things, the new rules of the Board allow for the submission of an appeal from an ALJ's decision "within 60 days after receipt of decision" (section 4.320(a)) and the filing of an appeal shall be effective upon the date of mailing or personal delivery (section 4.310)).

IBLA 190 (1976); Donald Beck v. Bureau of Indian Affairs, 8 IBIA 210 (1980). In this regard, the Department's general procedural regulations for proceedings before the Office of Hearings and Appeals prohibit an appeals board or other officer before whom an appeal can be filed from extending the time for the filing of an appeal. 43 CFR 4.22(f). 2/

Therefore, pursuant to the authority delegated the Board of Indian Appeals under 43 CFR 4.1, the appeal of Peter Swift Bird, Sr., from the January 21, 1981 Order Denying Petition for Rehearing entered by Administrative Law Judge Keith L. Burrowes is dismissed for lack of jurisdiction.

Wm. Philip Horton
Chief Administrative Judge

Franklin Arness
Administrative Judge

2/ This general requirement also appears in the new procedural regulations of the Board of Indian Appeals See 46 F.R. 7334, 7335 (section 4.310(d)).